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VIRGINIA LAW REGISTER.

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MISCELLANEOUS NOTES.

MR. JUSTICE HARLAN, of the Supreme Court of the United States, will deliver a course of lectures on Constitutional Law to the students of the Summer Law Class at the University of Virginia, during the coming summer. Justice Harlan has for some years been a member of the Law Faculty of Columbian University, Washington, and is a successful and interesting lecturer as well as a distinguished jurist. We have no doubt the proposed lectures will prove a valuable feature of the Summer Law Course.

THE VIRGINIA STATE BAR ASSOCIATION will hold its regular annual session at Old Point on the 14th, 15th and 16th of July.

The President's Address will be delivered by Ro. M. Hughes. Judge U. M. Rose, of Little Rock, Arkansas, has been selected to deliver the Annual Address, and the Hon. William Wirt Henry, of Richmond, and A. R. Long, Esq., of Lynchburg, have been chosen to read "Papers." One of the days will be set apart, in pursuance of the direction of the Association at its last meeting, as the Minor Memorial day. It is to be regretted that the Judges of the Court of Appeals may be prevented from attending the meeting, as it is probable that the court will at that time be in session at Wytheville, where, it is understood, the docket is large.

We hope to be furnished with the programme of proceedings in time for publication in the June No. of the REGISTER.

THE COURT OF APPEALS adjourned at Richmond on the 29th of April, after a session of nearly six months at that place, beginning early in November of last year, the session being divided into three terms.

The court did an immense amount of work, having entered final judgments and decrees in 130 cases and considered applications for appeals and writs of error in 128 cases, of which 75 were granted and 53 refused, leaving on the docket only 78 cases not disposed of as against 128 last May. These 78, of course, do not include the cases not matured for the docket at the November Term nor the cases in which appeals &c. have been allowed since that time.

The next session of the court will be at Wytheville, commencing June 10th, where, it is said, the docket is very heavy for that place and contains some cases involving many new and difficult questions for decision.

Who will say that ours is not a "working" court?

VOLUME II.—With this number the VIRGINIA LAW REGISTER enters upon its second volume. The Virginia bar, in whose interest it is published primarily, has been liberal in its support, and we begin the second volume with a courage and a confidence in striking contrast with the doubt and uncertainty confronting us a year ago. The publication has more than paid expenses—a result which we contemplate with not a little pleasure when we recall our concern on this point in the launching of our initial number. If the journal has proved a tolerably sturdy infant while yet in swaddling bands, as zealous friends have almost persuaded us into believing, we indulge the hope that it will gather strength and power for greater usefulness as its days increase.

And may we not ask for a still more cordial support from our brethren of the bar? We do not mean here to solicit subscriptions. The subject is over-sordid for editorial suggestion, and the little oatmeal needed for editorial diet is already provided. Besides, it may be that we already have all the wide-awake, up-to-date Virginia lawyers on our subscription list. If there are as many such lawyers in the State as the LAW REGISTER has subscribers, blessed is the Old Dominion. At any rate, we are not now soliciting aid either in the gold of the wicked gold-bugs or the silver of the oppressed silverites. We want you, brethren of the bar and judges of the trial courts, who are daily dealing with interesting questions which do not reach the Court of Appeals, to contribute to our columns. The editors, none of whom is at the bar, will endeavor to keep you informed of the proceedings of the Court of Appeals—do you, in return, keep them, and through them the profession generally, advised of proceedings in the trial courts and in your offices. We do not clamor here for ambitious articles. The senior editor begs the latter by private correspondence, with much waste of nervous energy. What we ask you to do, is to send us brief, crisp notes on practical subjects, either of law, pure and simple, or of collateral professional interest. If nothing else occurs to you, abuse something or somebody. The LAW REGISTER offers its own cheek for smiting. Then there is the legislature—a most prolific theme for vituperation. It is an old offender and is accustomed to abuse. But its rhinocerotie hide may be occasionally punctured. It passes new laws without knowing what the old is, and puts its enactments into effect six months before they are published. Caligula has been immortalized as a tyrant for less reason. His laws might have been read by the use of ladders and magnifying glasses. Clamor for a constitutional convention to stop these and other legislative abuses, including a tendency on the part of legislators to elect themselves to office. In the opinion of many, a new constitution will double the price of wheat and cut the price of reapers and mowers half in two.

Other subjects for criticism are certain habits which the appellate courts are, perhaps unconsciously, cultivating. One of these is a proneness to cite and to rely upon text-writers forgetting that an appellate court is a law unto itself and to the text-writers also. Another is a growing tendency to decide points not arising in the case. These extra-judicial outgivings, many of them necessarily inaccurate, serve only to fill up the reports and to increase the glorious uncertainty of the law. We venture to say that of the points digested in West's most excellent Annuals, more than one-half are *dicta*. Let some of our friends make the estimate and give us the benefit of the result. It may be done with sufficient accuracy by selecting pages at random from different portions of the volume, and comparing the points digested with the actual decisions as ascertained by reference to the opinions.

In the general shaking-up suggested, we should desire to have our own Court of Appeals commended for the general accuracy of its decisions and the wide-spread satisfaction it has given to the bar and to the people.

Share with us your views as to making effective the new law regulating admission to the bar. We should like to publish in our next number brief suggestions from members of the bar throughout the State as to the rules which the Court of Appeals should formulate with respect to the granting of license to candidates for admission. Not that we are authorized to speak for the court, but we are sure the thoughtful suggestions of the bar will not come amiss.—But the list of prolific themes becomes wearisome in the recital.

Finally, brethren, a general invitation is extended to you to partake of the hospitalities of our pages. Pray help us to fill the vacant places. You will be welcomed though without the wedding garment.

DIVORCE—CONSTRUCTIVE SERVICE OF PROCESS—DEFENDANT DOMICILED BUT NOT RESIDENT IN THE STATE.—The Supreme Court of California in *De La Montanya v. De La Montanya* (March 24, 1896,) was called upon to deal with a phase of the "due process of law" clause of the XIVth Amendment, in connection with constructive service of process, which seems not to have arisen in any of the numerous cases on that subject, to be found in the reports since the famous case of *Pennoyer v. Neff*, 95 U. S. 714.

The suit was for divorce, brought by a wife, husband and wife both being domiciled citizens of California. The husband left the State, taking the two children of the marriage with him and proceeded to Paris, where he took up his abode. Two days after his departure the wife's suit was instituted, and the process was served by publication, according to the laws of California. In her bill the wife asked for a divorce, for alimony and for custody of the children. The defendant did not appear, and in due time his default was entered and the court proceeded to hear the cause *ex parte*. Upon the hearing a decree was entered dissolving the marriage, awarding the custody of the children to the plaintiff, and making provision for alimony. The defendant subsequently appeared and moved to set aside the decree, so far as it undertook to deal with the custody of the children or the question of alimony, on the ground that the court had no jurisdiction of the children, and no jurisdiction of the defendant for the purposes of a personal decree against him for alimony.

It seems to have been admitted, upon well settled principles, that so far as the decree dealt with the marriage status, it was binding. And, on the other hand, that if the defendant had been a domiciled citizen and resident of *another State* or country, no jurisdiction could have been acquired by constructive service of process either for the purpose of dealing with the custody of the children or of granting a personal decree for alimony. But the question made was that, although the defendant was beyond the limits of the State when the suit was instituted and when process was published, yet, being a domiciled citizen of the State, the decree was valid within the State; and many *dicta* were cited to sustain that contention.

The court (with three out of seven judges dissenting) held that the doctrine of *Pennoyer v. Neff* was not confined to domiciled citizens of a foreign State, but was equally applicable to citizens of the State where the proceeding is had, provided

they are absent from the State when the process is served by publication. "Domicile," says Temple, J., in delivering the majority opinion, "has never, so far as I am aware, been made the test of jurisdiction to render a personal judgment. The question there is always whether the defendant has had a reasonable opportunity to be heard. Substituted service may be valid upon those within the State when the same service would be void as to those without the State. As to those within the State, the question would be whether it has afforded a defendant a reasonable opportunity to be heard. But the process cannot go beyond the State and compel any person in another State to resort to the State where the action is pending, there to make his defense. No service will be recognized made *there*, whether actual or constructive. It is as much an invasion of a foreign jurisdiction to serve a citizen of the State in which the action was brought, temporarily resident there, as it would be to summon from its borders a citizen of such foreign State."

While this reasoning is difficult to answer, the court seems to have been able to find no authority to directly sustain it.

In an equally strong dissenting opinion, by McFarland, J., many authorities are cited *contra*, but most if not all of them are prior to *Pennoyer v. Neff*, or the point was stated *obiter*.

The case seems to be of first impression, so far as actual decisions go, though the books abound in extra-judicial expressions on the subject, mostly to the contrary.

The modern doctrine in connection with judgments or decrees on constructive service of process, may be briefly summed up as follows:

(1) If the defendant is a non-resident of the State where the suit is pending, and is a domiciled citizen of another State, no personal judgment can be entered against him on constructive service of process, unless he voluntarily appears. A personal judgment in such case is giving an extraterritorial effect to the court's process, and is void even in the State where the judgment is rendered—being contrary to the XIVth Amendment to the Constitution of the United States, providing for due process of law: *Pennoyer v. Neff*, 95 U. S. 714; *Hart v. Sansom*, 107 U. S. 150; *Freeman v. Alderson*, 119 U. S. 185; *Wilson v. Seligman*, 144 U. S. 41; *Goldey v. Morning News*, 156 U. S. 18; *Dillard v. Central Va. Iron Co.*, 82 Va. 734, 741; *Young v. Young*, 89 Va. 675, 678; *Wilson v. St. Louis etc. R. Co.* 108 Mo. 588 (32 Am. St. Rep. 624 and note).

(2) But where the proceeding is *in rem*, or *quasi in rem*, and the plaintiff has proceeded strictly according to the local law in the constructive service of the process, the judgment is valid, so far as it affects the particular property against which the proceeding is taken. Where the proceeding is strictly *in rem*, this doctrine rests upon the idea that the property itself is the defendant, and the court acquires jurisdiction by its seizure and by public citation to the owner to appear and protect his interests. Where the proceeding is *quasi in rem*, as in attachments, foreclosure of mortgages and enforcement of liens generally, the jurisdiction rests upon the conceded sovereignty that every State possesses over property within its limits, and the consequent right to subject it to the payment of demands against it in favor of its own citizens. For such purpose the defendant is supposed to be in possession of his property, and to have notice by its seizure of the proceeding taken against it. But no further effect can be given to the judgment than as it

may operate upon the property so seized. There can be no valid personal judgment, even for costs: *Cooper v. Reynolds*, 10 Wall. 308; *Freeman v. Alderson*, *supra*; ca. ci. *supra*, under (1).

A suit for divorce is regarded as *quasi in rem*, and it is very generally conceded that a divorce pronounced by the court of the applicant's domicile, after such citation as the local law prescribes, is valid so far as it fixes the status of the plaintiff, although the defendant is domiciled elsewhere, and neither appears nor, by reason of ignorance of the proceeding, has opportunity to appear and make defense. This rests upon the absolute right of every State to ascertain and declare the status of its own domiciled citizens: 2 Bish. Mar. Div. & Sep. 138-152; 2 Black on Judgments, 925, 933; Freeman on Judgments, 581-586; *Ditson v. Ditson*, 4 R. I. 87—a case of which Judge Cooley says: "Upon the whole subject of jurisdiction in divorce suits, no case is more full and satisfactory": Cooley Const. Lim. 2d ed. 401, n.; *Pennoyer v. Neff*, *ubi sup.* 734-5; *Cheever v. Wilson*, 9 Wall. 108; *Rigney v. Rigney*, 127 N. Y. 408 (24 Am. St. Rep. 462). But in such a proceeding there can be no decree for costs nor for alimony, nor for custody of children not within the jurisdiction, nor imposing any personal obligation on the defendant who has not been served with process and who has not appeared. This follows as a necessary consequence from the doctrine stated in (1) above. See *Rigney v. Rigney*, *sup.*; *Lytle v. Lytle*, 48 Ind. 200; *Garner v. Garner*, 56 Md. 127; Cooley Const. Lim. 406; 2 Black on Judgments, 933; Freeman on Judgments, 584, 586; 2 Bish. Mar. Div. & Sep. 77, 79; 1 Ib. 1464.

The effect of such an *ex parte* divorce is indirectly to fix the status of the absent consort, over whom the court had no jurisdiction. As Mr. Bishop strikingly states it, "The relation of husband and wife being in its nature capable of existing only in pairs, when one part of the dual status is removed by being made non-marital, the other part is—like the side of a pair of scissors from which its mate has been taken, being therefore no longer scissors—not a marital status. 2 Bish. Mar. Div. & Sep. 137. "And the rule is universal; it has prevailed at all times and in all countries since civilization was known on the earth, that when a married man has ceased to have a wife, or a married woman no longer has a husband, the marriage status is at an end. It makes no difference whether this loss of the consort comes from death or from divorce. As there can be no death without dissolving the marriage, so likewise there can be no divorce. And as it is immaterial to this result what power, what government, or what force caused the death, so it is immaterial whence proceeded the divorce." Ib. 153.

(3) The third phase of the question is the validity of a personal judgment against one domiciled in the State whose court pronounced the judgment, but who was absent from the State at the time of the constructive service of process. In the California case of *De La Montanya v. De La Montanya*, commented upon in an earlier part of this note, it is held, as we have seen, that the question is not one of domicile at all, but of the extraterritorial effect of the process; that if the defendant is beyond the limits of the State, though retaining his domicile there, he cannot be compelled to resort to that State, except by giving the process an extraterritorial operation; and that, as this is beyond the power of any State, a personal judgment in such case cannot be sustained any more than if the defendant were domiciled elsewhere.

RECENT DECISIONS BY THE U. S. SUPREME COURT.

(Head notes from advance sheets of the Lawyer's Co-operative Publishing Company.)

Duty of gas company in use of streets—Judgment against city and recovery over against gas company—Judgment when conclusive.

1. It is the duty of a gas company to supervise and keep in repair a gas box, which is a part of the apparatus of the company, and is placed in a sidewalk to afford means for turning on or off the gas from a house, when it has entire control of the box, to the exclusion of the property owner, although the latter is required to pay for the gas box and connection.

2. A municipality which has been condemned to pay damages occasioned by a defective gas box in a sidewalk, which it was the duty of a gas company to supervise and repair, has a cause of action against the gas company therefor.

3. A judgment against a defendant who has a right of action over against a third party is conclusive upon the latter, provided he has notice and full opportunity to defend.

—*Washington Gas Light Co. v. Dist. of Columbia*, U. S. Supreme Court, March 2, 1896.

Game laws—Statute prohibiting transportation of game—Interstate commerce.

1. A State has power to make it an offense to have in possession, for the purpose of transportation beyond the State, birds which have been lawfully killed within the State during the open season; and a State statute creating this offense does not violate the interstate commerce clause of the Constitution of the United States.

2. The police power of the State to preserve game birds as a source of food supply for its people, justifies a statute prohibiting the transportation of such birds beyond the State, even if interstate commerce may be remotely and indirectly affected thereby.

—*Geer v. Connecticut*, U. S. Supreme Court, March 2, 1896.

Justices Brewer and Peckham taking no part in the decision, and Justices Field and Harlan dissenting.

Wrongful use of mails—Obscene matter.

The words "obscene," "lewd," and "lascivious," as used in U. S. Rev. Stat. sec. 3893, respecting the wrongful use of the mails, signify that form of immorality which has relation to sexual impurity, and have the same meaning given them at common law in prosecutions for obscene libel, and therefore do not extend to language, although it may be exceedingly coarse and vulgar and plainly libelous, if it has not a lewd, lascivious and obscene tendency, calculated to corrupt and debauch the mind and morals.

—*Swearingen v. U. S.*, U. S. Supreme Court, March 2, 1896.

Exemption from taxation—Corporate charters.

In a batch of cases, coming up from the State of Tennessee, numerous phases of the subject of corporate charters and exemption from taxation are discussed with great learning by Mr. Justice Peckham. The cases are *Bank of Commerce v. Tennessee, County of Shelby v. Union & Planters Bank, Mercantile Bank v. Tennessee*,

Phoenix Fire & Marine Ins. Co. v. Tennessee, Memphis City Bank v. Tennessee, Planters Fire & Marine Ins. Co. v. Tennessee, Home Ins. Co. v. Tennessee, reported from pp. 577 to 599 of the Co-operative Advance Sheets.

Amongst others, the following principles are laid down :

1. A charter of a bank which gives it a lien on its stock for debts due it by stockholders, and provides that it "shall pay to the State an annual tax of one-half of one per centum on each share of the capital stock, which shall be in lieu of all other taxes," constitutes an exemption of the stock in the hands of shareholders from any other tax than that thus imposed by the charter [in the absence of any constitutional provision on the subject] ; and a subsequent revenue law which imposes an additional tax on the shares of stock in the hands of shareholders impairs the obligation of contracts, and is void. But such exemption does not extend to the surplus belonging to the bank, as the surplus is distinct property from the capital stock.

—*Bank of Commerce v. Tennessee*, U. S. Supreme Court, March 2, 1896.

1. There is a clear distinction between the capital stock of a corporation and the shares of stock of such corporation in the hands of its individual shareholders, so that the taxation of the one is not the taxation of the other.

2. A charter giving a bank a lien on shares of its capital stock for debts of shareholders, and imposing a certain tax on shares of stock to be in lieu of all other taxes, exempts such shares in the hands of shareholders, from further taxation, but does not exempt the corporation from taxation on its capital stock or accumulated profits.

—*County of Shelby v. Union & Planters Bank*, Ib., March 2, 1896.

A judicial sale of the charter of a bank by a receiver does not carry an exemption from taxation of shares of stock given by the charter to shareholders, where there was no sale of any specific shares of stock, and the sale was made after the State Constitution had prohibited exemptions from taxation, although purchasers of the charter were recognized by the legislature as a corporation.

—*Mercantile Bank v. Tennessee*, Ib., March 2, 1896.

1. The existence of a well-founded doubt is equivalent to a denial of the claim to an exemption from taxation.

2. The universal rule in regard to taxation is that the power and right of the State to tax are always presumed. The exemption from taxation must be clearly granted.

—*Phoenix F. & M. Ins. Co. v. Tennessee*, Ib., March 2, 1896.

1. A change of the business of a company from that of insurance to that of banking, under a law authorizing such change, is such a material and radical change that, when made after the State Constitution had prohibited exemptions from taxation, the legislature has no power to continue an exemption from taxation granted by the charter to the insurance company so that it will continue to exist in favor of such company exercising an exclusively banking business.

2. The effect of a State law giving to a company having by its charter the right to receive moneys in trust or otherwise, the right to do a banking business, is to grant a new charter to the extent of granting banking powers, and the company, if it avails itself of the privileges mentioned in such law, takes them subject to the Constitution and laws then in force.

—*Memphis City Bank v. Tennessee*, Ib., March 2, 1896.

WE take the following from the *American Law Review*, Jan.-Feb., 1896:

"RULES FOR CITATIONS.—The Reporter of the Supreme Court of Nebraska, D. A. Campbell, Esq., has issued the following rules for citations in briefs filed in the Supreme Court of that State, recommending their adoption by the profession, and adding that it 'will greatly assist the court and reporter':

'1. Abbreviate as follows—

Atlantic Reporter.—Atl. Rep.

Chapter.—Ch.

Company.—Co.

Edition.—ed.

Federal Reporter.—Fed. Rep.

Insurance.—Ins.

Manufacturing.—Mfg.

National Bank.—Nat. Bank.

Northeastern Reporter.—N. E. Rep.

Northwestern Reporter.—N. W. Rep.

Pacific Reporter.—Pac. Rep.

Page.—p.

Railroad.—R.

Railway.—R.

Section.—sec.

Southeastern Reporter.—S. E. Rep.

Southern Reporter.—So. Rep.

Southwestern Reporter.—S. W. Rep.

Supreme Court Reporter.—Sup. Ct. Rep.

2. Soule's Manual is the standard for abbreviations of Reports and Reporters not mentioned in Rule 1.
3. 'County' should never be abbreviated in a citation.
4. The name of an insurance company should be given in full, with the exception as to abbreviating the word 'insurance.'
5. The first word of the name of a railroad company should be written in full, and the words following should be abbreviated thus: *Chicago, B. & Q. R. Co.*
6. The standard abbreviations for the names of States should be used.
7. The names of corporations should be given in full where the foregoing rules do not apply.
8. Do not abbreviate titles of text-books.
9. Do not abbreviate names of authors of text-books.
10. In citing text-books the number of the volume, where there is more than one, should precede the author's name.
11. In citing text-books the number or name of the edition, where there is more than one, should be enclosed in [] just preceding the page or section, thus: 2 Wharton, Evidence [2d ed.] sec. 490.
12. The title of a case should only contain the name of one plaintiff and one defendant, thus: *Smith v. Jones*, 1 Neb., 4; *Peoria Mfg. Co. v. German-American Ins. Co.*, 61 N. W. Rep. [Ia.], 467; *Chicago, B. & Q. R. Co. v. Douglas County*, 4 L. R. A. [Neb.], 27.

13. '*Et al.*' should be omitted from all citations.
14. Do not insert administrator, executor, trustee, or other designation after names in titles.
15. *Id.* should never be used in citations.
16. The State in which the decision was rendered should be indicated in all citations from State courts of last resort, thus: *Smith v. Jones*, 4 Met. [Mass.], 823.
17. In citing the Federal Reporter do not indicate the State from which the case was appealed.
18. The titles of cases should be printed in italics.
19. The title of a case should never be omitted from a citation.'

"Most of the above is quite apt, and whether or not the best form, it is to be said in its favor that if it produces uniformity that will be well. Some of the above recommendations seem, however, not beyond criticism. In abbreviating the name of a railroad company, we submit that instead of saying, for example, *Chicago, B. & Q. R. Co.*, it is sufficient to say, *Chicago &c. R. Co.* But we demur, on the one hand, to the habit of the Iowa reporter of calling it *C., B. & Q. R. Co.*, or *C., B. & Q. R. R. Co.*, and using the same initial letter abbreviations for obscure railroad companies; and, on the other hand, to the habit which many reporters are falling into of making it simply *Railway Co.* There are now so many cases in the books that there is not sufficient differentiation in calling a case, for example, *Railway Co. v. Smith*, or *Railway Co. v. Brown*; since there are probably a hundred cases in the American State and Federal reports where Smith or Brown sued a railroad company, and where it got into an appellate court with the names reversed. We cavil at abbreviating the word "*manufacturing*" into "*mfg.*" That, to us, looks too much like a grocery-keeper's account. The reason why it is proper, as Mr. Campbell suggests, to refrain from using *Id.* in citations, is that if the brief maker should want to run a case in between the *Id.* and the previous citation to which it refers, it leads to confusion, in case he forgets to change the *Id.*, by writing out the name of the case,—of which confusion there are frequent examples in text-books. He is right as to abbreviating the word *insurance*, and as to not abbreviating the word *county*. *County*, abbreviated, becomes confused with *company*; and it is a sufficient abbreviation to say *Chicago Fire Ins. Co.* So, in the case of a national bank, it is not necessary to write the word *national* in full. *Chicago Nat. Bank*, for example, is quite sufficient. There are so many State reports which still stand in the names of private reporters, that it is better to follow the form of the United States Digest, and put the name of the State after that of the reporter, in all cases: thus *Smith v. Brown*, 3 Metc. (Mass.) 250; and it may be doubtful whether the same means ought not to be used for distinguishing foreign reports from each other—English, Irish, Scotch, Canadian, etc. To avoid error, *Colorado* should be spelled *Colo.*; but *Cal.* for *California* has acquired such a pre-emption of the field that we cannot change it to *Calif.* The same may be said of *Mo.* for *Missouri*, which is an abbreviation of an abbreviation, a contraction of *Misso.*, which abbreviation was adopted to distinguish *Missouri* from *Mississippi*, which latter was and is abbreviated *Miss.* It is doubtful whether we ought to use *S. C.* for South Carolina as long as we use *S. C.* for *same case*. We have known confusion to result from it. The late Judge Deady, of the District Court of the United States for the District of Oregon, was, we believe, the revisor of the Code

of Oregon. He used to insist upon citing the name of that State simply *Or.*; and he pestered the editors with objections to the abbreviation *Oreg.* Irving Browne, when editor of the *Albany Law Journal*, replied that a man having more experience in the work of an editor would have known that *Or.* is likely to be confused by some printers with *Oh.* for *Ohio*. This suggestion may have been far-fetched; but we have known the three abbreviations, *Mo.* for *Missouri*, *Me.* for *Maine*, and *Md.* for *Maryland* to be confused through illegible writing in MSS. It is perhaps to be regretted that the habit had not obtained of abbreviating *Maine Mai.* and *Maryland Mar.*; but it is now too late to repent. We have known of printers making confusion between *Mas.* for *Mason*, and *Mass.* for *Massachusetts*; but this will not happen where there is a clear MS. and careful proof-reading. The same confusion frequently attends *Penn.* and *Tenn.* *Pennsylvania* should be abbreviated *Pa.* It ought to be added that the use of the typewriter has become so common that there is no longer any excuse, except extreme poverty, for an author, editor, or lawyer, to send an illegible MS. to a printer. There is only one way to avoid errors, and that is to have your MS. typewritten, and paragraphed, punctuated and capitalized with extreme care, and then to insist that the printer go by the only rule that justifies him, the rule to "follow copy." Perhaps it may not be out of place to add that it has become a recent fad to punctuate "long," as it is called by printers, or to omit punctuation marks altogether. In some recent books which we have received from England, printed at presses having high-sounding names, there is almost an entire absence of punctuation. This cannot be justified on the ground that it is fashionable. Its excuse must be that it is easier for an ignorant person not to punctuate a MS. than to punctuate it. Good punctuation is absolutely necessary to perspicuity. An unpunctuated MS. is like a MS. written in a foreign language, with which the reader may be somewhat familiar, but the meaning of the words of which do not readily catch his understanding. An unpunctuated MS. imposes an extra burden upon the reader in the way of deciphering its meaning, which no author has the right to put upon him."

In the *American Law Review* for March-April, 1896, Mr. Campbell writes as follows in reply to the above:

"To the Editors of the *American Law Review* :

In your notes relating to rules for citations, in volume 30, page 107, of the *American Law Review*, you criticise the following rule: 'The first word of the name of a railroad company should be given in full, and the words following should be abbreviated, thus: *Chicago, B. & Q. R. Co.*' You insist that 'it is sufficient to say *Chicago &c. R. Co.*' The question involved is whether the letter abbreviations or '&c.' should follow the leading word in the corporate name. In *Green Bag*, vol. 1, p. 439, Judge Thompson, in his able discussion of 'Common Errors and Deficiencies in Law Reporting,' says: 'The title of a case in a volume of reports is intended merely as an ear-mark by which it may be known and cited, and all that is necessary to be given is enough to distinguish it from other cases.' What part of an ear-mark is '&c.' when used in all cases where a railroad company is a party? Instead of being a distinguishing mark it makes the names of all railroads exactly alike where the names begin with the same word. It seems to me that what you say in criticism of the practice of using *Railway Co. v. Smith*, or *Railway Co. v. Brown*, will apply with almost equal force to the use of '&c.' in a citation.

For example, I have before me a brief referring to '*Chicago, R. I. & P. R. Co. v. Lonergan*, 118 Ill. 71.' The case does not appear on the page cited. I turn to the alphabetical table of cases in the volume referred to, and find nearly half a column of names of different railroad companies all beginning with '*Chicago*.' Why should I be confronted with nearly half a column of names of different railroad companies all printed '*Chicago &c. R. Co.?*' In an alphabetical table the eye of the searcher immediately falls upon the name fixed in his mind, where the letter abbreviations follow the leading name. '*Chicago, R. I. & P. R. Co.*,' is distinguishable from other corporate names beginning with '*Chicago*.' The case referred to is reported in 118 Ill. 41, instead of '71.' The names of all corporations in citations should be given with reference to a convenient and accurate alphabetical arrangement of other cases. The use of '&c.' in citations should, therefore, be classed with the other abominations condemned by Judge Thompson in his article in the *Green Bag* referred to above.

You also condemn the practice of abbreviating '*manufacturing*.' The word is very long. It takes up too much space. The abbreviation '*mfg.*' is short. It is well understood. It is authorized by the *Standard Dictionary*, and appears in some of the best and most accurate law reports. A brief, convenient, useful and correct abbreviation should not be condemned because it is used in a 'grocery-keeper's account.'

In defending my rules for citations I am not unmindful of the aid I have received from the *Review*. I appreciate the good that has resulted from your timely criticisms upon law reporting.

Very respectfully,

D. A. CAMPBELL,

Lincoln, Nebraska.

[Reporter of Supreme Court of Nebraska.]'

It would seem that the *American Law Review* is right as to the mode of citation of the name of a railroad. The use of "&c." following "*Chicago*," in the above example, is to indicate that an omission has been made; and when, on this account, many cases begin with "*Chicago &c.*," they should be arranged alphabetically by the name of the defendant, which would remove the objection urged by Mr. Campbell. But we think Mr. Campbell is right as to the abbreviation "*mfg.*" for "*manufacturing*." We can see no objection to it.

DEATH OF AUSTIN ABBOTT.—We take the following notice of the death of this distinguished legal author and law teacher from *The Outlook* for April 25:

"Austin Abbott, LL. D., Dean of the New York University Law School, died at his home in this city [New York] on Sunday morning last [April 19, 1896]. He was the second of the four sons of Jacob Abbott, his brothers being the late Benjamin Vaughan Abbott; the Rev. Lyman Abbott, pastor of Plymouth Church, Brooklyn, and editor-in-chief of *The Outlook*, and the Rev. Edward Abbott, rector of St. James Church, Cambridge, Mass., and editor of the *Literary World*, of Boston. . . . Dr. Austin Abbott inherited from his father, Jacob Abbott, tireless industry, steadiness of will, a judicial temper, and a clear, simple, and unaffected style. Born in Boston in 1831, he received his early education in that city, in Roxbury, and in Farmington, Me., removing to this city in 1843. Here, under his father's direct supervision, he prepared for college, entering the University of the City of New York, and graduating from that institution in 1851.

Two years later he was admitted to the bar of this State, and began the practice of the law in partnership with his brother Benjamin Vaughan, Lyman joining the firm not long afterwards. He had no sooner entered upon his active career as a lawyer than he began that work of annotation, digest, and comment in the department of jurisprudence which he kept up, almost without intermission, to the day of his death. He was an indefatigable student, and he kept himself thoroughly abreast both of the development of the law and of the practice by statute and by decision. His books on legal procedure have long been text-books in the hands of law students throughout the country. His unusual legal scholarship was constantly drawn upon in the active practice of his profession, and he was associated with the trial of many notable cases. Five years ago he became the Dean of the Law Department of the University of the City of New York, and gave himself to his new work with characteristic ardor and devotion. Under his direction the course at the University Law School was revised and enlarged, a graduate course was added, and many new features were introduced. Under his leadership the school came very rapidly to the front, and the number of its students was very materially increased. Dr. Abbott was active in reform and religious work. . . . His interest in the cause of the Indian and in international arbitration was both ardent and practical. With him belief in a cause carried with it the compulsion of working for it, and the depth and sincerity of his religious convictions were evidenced by the continuity and ardor of his work for his fellow-men."

It may be added to the above that in 1894 Dr. Abbott was made Chairman of the Committee on Legal Education of the American Bar Association—a position made vacant by the death of the accomplished William G. Hammond, Dean of the St. Louis Law School. As a member of the Committee on Legal Education, the writer of these lines had the honor of being associated with Dr. Abbott, and was much impressed with his learning and ability, and especially with the suggestiveness of his mind, and his wonderful power of analysis. And at the last meeting of the American Bar Association, at Detroit, the Chairman of the Committee on Law Reporting and Digesting, to which was referred the preparation of a form of index, *i. e.*, a common index under which statutes and decisions could be scientifically classified and arranged—requested that Dr. Abbott should be associated with the committee in the work, as "the man most competent in the United States for that purpose"; which was accordingly done.

Although Dr. Abbott was in his sixtieth year when, in 1891, he entered upon the work of a law teacher as Dean of the Law Department of the University of the City of New York, he soon demonstrated his fitness for the position, and exhibited the enthusiasm and progressiveness of a man of half his age. He was eager to advance and improve legal education, not only in methods of instruction, but also in the extent and thoroughness of the course prescribed for admission to the bar. In connection with his deanship he founded and edited *The University Law Review*; and through its columns his influence was widely felt.

Dr. Abbott had more than paid the debt which Lord Bacon says that every lawyer owes to his profession, but his bright eye and brisk step seemed to promise years of activity and usefulness; and his death will be deplored by his brethren of the bar and fellow-teachers of the law throughout the United States.

C. A. G.